

# Exhibit C

**BAE SYSTEMS**

DATE: August 20, 2017

TO: Lura Lewis, Director of Contracts  
Fluor Government Group  
100 Fluor Daniel Drive  
Greenville, SC 29607-2770

SUBJECT: Nitrocellulose Program – Cure Notice Design Safety and Insufficient Notification Practices

REFERENCE: (a) ELP-100815-01 New NC Facility (the Subcontract)  
(b) 15 Sep 2016: Package 1B/3B 60% (the Review)  
(c) Revised Technical Proposal for: New Nitrocellulose Facility Project for BAE Systems dated November 2015 (the Proposal)

Dear Ms. Lewis:

In accordance with the termination clause<sup>1</sup> of Subcontract Agreement No. ELP-100815-01 ("the Subcontract"), BAE Systems Ordnance Systems Inc. ("BAE Systems") considers the following Fluor deficiencies to be endangering the performance of the Subcontract:

1. Failure to design in accordance with ("IAW") the requirement of Exhibit E<sup>2</sup> of the Subcontract to ensure that there is no [REDACTED];
2. Failure to remedy design inadequacies within a reasonable time; and
3. Failure to proceed with performance of the Subcontract.

**Item 1 - Failure to design in accordance with ("IAW") the requirement of Exhibit E<sup>3</sup> of the Subcontract to ensure that there is no [REDACTED]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>1</sup> Subcontract Agreement No. ELP-100815-01, Exhibit B USGOVA-CON, FAR 52.249-6

<sup>2</sup> Subcontract Agreement No. ELP-100815-01, Exhibit E Technical Bid Package, Revision 5, Section 3.3

<sup>3</sup> Subcontract Agreement No. ELP-100815-01, Exhibit E Technical Bid Package, Revision 5, Section 3.3

<sup>4</sup> Subcontract Agreement No. ELP-100815-01, Exhibit E Technical Bid Package, Revision 5, Sections A.7, A.8.c, A.8.d, 3.3, 3.5, F.5.h, D.3.f, G.1, and H.2.ba.

<sup>5</sup> Subcontract Agreement No. ELP-100815-01, Exhibit I Supplier Proposal

[REDACTED]

[REDACTED]

If Fluor did not understand the requirements, Fluor is contractually required to notify BAE Systems:

“Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications or which are customarily performed, shall not relieve the CONTRACTOR from performing such omitted or misdescribed details of work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. CONTRACTOR shall carefully review the Contract Documents and if CONTRACTOR observes that any of the Contract Documents are at variance therewith in any respect, CONTRACTOR shall promptly notify BAE SYSTEMS in writing.”<sup>6</sup>

Further, as Fluor sets forth in its Proposal “[Fluor] is responsible for ensuring the design complies fully with the RFP” and that it will “reaffirm the interpretation of the RFP criteria.” Therefore, Fluor must cure its design deficiencies.

**Item 2 - Failure to remedy design inadequacies in a reasonable time**

[REDACTED]

[REDACTED]

**Item 3 – Failure to Proceed with Performance of the Subcontract**

Despite numerous discussions of these requirements, Fluor has failed to proceed to complete them. BAE Systems’ technical team met with Fluor for a bi-weekly status meeting at Fluor’s Charlotte site on August 4, 2017. At that time, Jim Worcester directed his team to “stop all work” on a solution that BAE Systems had approved because BAE Systems did not concur that the requirement was a change condition.

Whether the work is within or outside the scope of the Subcontract, Fluor is required to proceed with performance of the Subcontract. Fluor is required to perform work within the scope of the Subcontract. If Fluor believes the work is outside the scope of the Subcontract, Fluor is still required to proceed with the work and may not stop work. The Subcontract states:

“If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price, the delivery schedule, or both, and the contract shall be modified in writing accordingly...

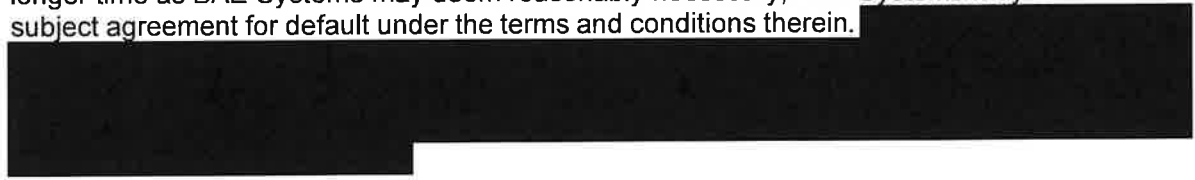
<sup>6</sup> Subcontract Agreement No. ELP-100815-01, Exhibit A BAE Construction, Section 22(c) SPECIFICATIONS AND DRAWINGS

*Pending any such adjustment, SELLER will diligently proceed with the contract as modified."*  
(emphasis added)<sup>7</sup>

To fail to continue work unnecessarily delays progress under a Subcontract for which time is of the essence.

#### **Cure Required**

Unless such condition is cured within ten (10) calendar days after receipt of this notification, or such longer time as BAE Systems may deem reasonably necessary, BAE Systems may terminate the subject agreement for default under the terms and conditions therein.



For all options, a well-articulated basis of estimate is required for both design and construction (BAE Systems wishes to minimize the cost impact where possible due to its mutual interest in reducing

---

<sup>7</sup> Subcontract Agreement No. ELP-100815-01, Exhibit A BAE Construction, Section 22(c) SPECIFICATIONS AND DRAWINGS

cost overruns which may minimize the contingency SLIN for which BAE Systems has a 50% interest). For all options, Fluor must also articulate impact to the critical path and whether or not the option would cause Fluor to exceed Fluor's period of performance in the Subcontract. BAE trusts that Fluor is committed, as set forth in its Proposal, to improving the project schedule, finding value engineering solutions, and minimizing performance risk from design to commissioning.

In light of Fluor's failure to provide sufficient information relative to remediation approaches, and in order to minimize damages incurred due to Fluor's defective performance, BAE Systems must solicit quotes from outside parties to remediate the void and hollow spaces found in Fluor's design packages.

Please email your response to [Wakely.Wescott@baesystems.com](mailto:Wakely.Wescott@baesystems.com) by August 31, 2017. Thank you.

Sincerely,



Digitally signed by Users, Bate,  
Kelly  
DN: dc=com, dc=radford-aap,  
dc=ad, cn=Users, cn=Bate, Kelly,  
email=kelly.bate@baesystems.c  
om  
Date: 2017.08.20 17:21:47  
-04'00'

Kelly Bate  
Director of Procurement  
BAE Systems

cc: Program Office  
Procurement File